IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 150 OF 1999

Mr. Ismail Kanga & anr. ..Petitioner

V/s.

M/s. Fouzak Machine Tools Pvt. Ltd.
& anr. ..Respondents

Mr. M.S. Doctor i/b M/s. Federal Rashmi Kaut
for the Petitioner

CORAM : ANOOP V. MOHTA,J.

DATED : 13th July, 2007

P.C.

The Petitioner has invoked sections 433 and 434 of the Companies Act, 1956. As the respondent company is debted to the petitioner to the tune of Rs. 20,40,000 together with interest at the rate of 18% per annum from 1-1-1990. As Respondent company though requested repeatedly to make the payment and as repeated assurances were given but neglected to make payment of outstanding amount, therefore, a statutory notice was issued. The same was received by the company. There is no basic dispute amongst the parties except the submission of limitation.

2. By order dated 2-9-1999 the Court has observed based upon the averments made that in February 1996 the company infact acknowledged the liability and made the part payment of Rs. 2,00,000/-. That averment remained uncontroverted till this date. The company has further acknowledged the debt by fax dated 9-9-1996 (exhibit A9).

3. There are some disputes about some of the promissory notes basically dated 11-10-1993 and 21-8-1993 but still for other promissory notes the contents therein itself is sufficient to consider the Petitioner's case as prayed.

4. This Court has, therefore, admitted the petition and directed the petitioner to comply with all formalities of advertisemet.

5. Though time was sought to file reply on 9-8-2002 when matter was for final hearing and disposal, till this date there is no reply filed by the company. This Court by order dated 14-10-2000 even appointed the provisional liquidator. The petitioner's affidavit of proof for publication dated 16-3-2001, proof of affidavit of service dated 20-3-2002 are part of the record.

6. None appeared for the respondent company even today. The averments made in the petition as well as the demand notice remained uncontroverted, basically, in relation to the liabilities/debt as claimed by the petitioner.

7. In view of this undisputed position on record and as the claim is within limitation, there is a sufficient case made out by the petitioner for prayer clause (a) and (b).

8. Resultantly, the petition is allowed in terms of prayer clause (a)&(b). The concerned parties to take appropriate steps in accordance with law.

(ANOOP V. MOHTA,J)